any precaution or preventive measure whatsoever to contain the fire on their own land and to prevent the spread of the fire to the neighbouring land of the plaintiffs. The trees for burning were not properly heaped up and no fire gullies were made by the defendants.

Knowledge on the part of the plaintiffs that the defendants would on some unknown date in the future burn the felled trees or omission on the part of the plaintiffs to ask the defendants when they would burn the trees does not, in my opinion, constitute contributory negligence in the circumstances of this case. On the contrary, the defendants were negligent in failing to take reasonable measure and precaution to ensure that the fire lit by them on their land did not cause damage to property on the plaintiffs' land.

In the result, the defendants' contention that there was contributory negligence fails. I hold that the defendants were solely to blame for the damage caused. There will be judgment for the plaintiffs against the defendants for $40,000 with interest thereon at 3% per annum from February 10, 1976, to date of judgment and at 8% per annum from date of judgment to realization and costs to be taxed.

Claim allowed.

Solicitors: *Ting Poi Tek & Co.; Stanley Ponniah, Ng & Soo.*

UNITED ASBESTOS CEMENT BHD. v. UNITED COMMERCIAL TRADING (M) SDN. BHD.

[O.C.J. (Arulanandom J.) March 30 & August 26, 1981]
[Penang — Civil Suit No. 535 of 1980]

Practice and Procedure — Statement of claim — Application to strike out — R.H.C. 1980, O. 18 r. 19.

Shipping Law — Bills of Lading required to give badge to carriers — Scope of art. III r. 6 of First Schedule to the Carriage of Goods by Sea Ordinance, 1950.

The plaintiffs sued the defendants who were owners of a lighter under an agreement, whereby the defendants at the plaintiffs' request should from time to time act as forwarding agents, carriers and bailees for reward of the plaintiffs failed to deliver the plaintiffs goods unloaded from the ship S.S. Prometheus on August 4, 1978. The defendants applied for an order that the statement of claim in the action be struck out forthwith and the action herein dismissed with costs under the provision of O. 18 r. 19 of the Rules of the High Court 1980. The defendants claimed that the plaintiffs' claim in the action was not brought within the year from the date when the goods, the subject matter of this action, should have been delivered, as mandatorily required under the provision of rule 6 of Art. III of the First Schedule of the Carriage of Goods by Sea Ordinance. The said goods should have been delivered on August 4, 1978 but the action was brought and commenced only on November 20, 1980 after a period of over two years when the said goods should have been delivered.

The only issue was one of law. It was agreed that if the defendants were carriers, then they would be entitled to judgment on the motion under the Carriage of Goods by Sea Ordinance and the Hague Rules.

Held, dismissing the application: the question whether the defendants are carriers or bailees cannot be determined purely on affidavits as evidence has to be led to determine the exact relationship between the plaintiffs and the defendants. In this case there were no Bills of Lading which usually give the badge to carriers. Hence, unless it is established by evidence that there was a Bill of Lading or any similar document of title which regulates the relations between a carrier and holder of the same, the court is in no position to strike out the action.

CIVIL SUIT.

R. Rajasingam for the applicants/defendants.

Lim Kean Chye for the respondents/plaintiffs.

Cur. Adv. Vult.

Arulanandom J.: This was an application by the defendants/applicants for an order that the statement of claim in the action be struck out forthwith and the action herein dismissed with costs under the provisions of Order 18 rule 19 of the Rules of the High Court 1980 on the grounds that the plaintiffs' claim in the action herein was not brought within one year from the date when the goods, the subject-matter of this action, should have been delivered, as mandatorily required under the provisions of rule 6 of Article III of the First Schedule to the Carriage of Goods by Sea Ordinance (No. 13 of 1950). The said goods should have been delivered on the August 4, 1978 but the action herein was brought and commenced only on November 20, 1980 after a period of over two years when the said goods should have been delivered.

The First Schedule Article III rule 6 of the Carriage of Goods by Sea Ordinance 1950 reads as follows: —

"In any event the carrier and the ship shall be discharged from all liabilities in respect of loss or damage unless suit be brought within one year after delivery of the goods or the date when the goods should have been delivered."

In this case the plaintiffs sued the defendants who were the owners of a lighter PC 2817 under an agreement in writing whereby the defendants at the request of the plaintiffs should from time to time act as forwarding agents, carriers and bailees for reward of the plaintiffs failed to deliver the plaintiffs goods unloaded from the ship s.s. Prometheus on August 4, 1978.

The facts are not disputed. The only issue was one of law. It is agreed that if the defendants were carriers, then they would be entitled to judgment on the motion under the Carriage of Goods by Sea Ordinance and The Hague Rules which were adopted by this country in 1956.

But the respondents/plaintiffs argue that the defendants are not carriers but are sued as bailees and if their contention is correct then the defendants are not entitled to judgment on the motion summarily without trial. The question whether the defendants are carriers or bailees cannot be determined purely on affidavits as evidence has to be led to determine the exact relationship between the plaintiffs and the defendants. In this case there were no Bills of Lading which usually give the badge to carriers. Item (b) under the heading "Definitions" in the First Schedule to the Carriage of Goods by Sea Ordinance "Rules relating to Bills of Lading" reads as follows: —

"(b) 'contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any

similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;"

Hence unless it is established by evidence that there was a Bill of Lading or any similar document of title, insofar as such document relates to carriage of goods by sea including any bill of lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and holder of the same, the court is in no position to strike out the action.

For the reasons stated above the motion was dismissed with costs.

Motion dismissed.

Solicitors: *R. Rajasingam & Co.; Lim Kean Chye & Co.*

METAL INDUSTRY EMPLOYEES UNION v. REGISTRAR OF TRADE UNIONS, MALAYSIA

[O.C.J. (Hashim Yeop A. Sani J.) August 20, 1981]
[Kuala Lumpur — Originating Motion No. 7 of 1979]

Trade Union — Order by Registrar removing names of members of union — Non-compliance with rules of natural justice — Trade Union Ordinance 1959, s. 26(3).

Administrative law — Trade Union — Cessation of membership order by Registrar — Non-compliance with rules of natural justice — Order quashed.

The union sought that the order made by the Registrar of Trade Unions, Malaysia, contained in his letter of August 4, 1978 be quashed. The said Order sought to be quashed was that the names of 61 members of the union be removed forthwith from the register of the union because of their purported involvement with certain illegal industrial actions. The order of the Registrar was purported to be made under section 26(3) of the Trade Unions Ordinance 1959.

Held, allowing the union's application: (1) it was not within the power of the Registrar to order cessation of membership of any member of a trade union. Cessation of membership under that sub-section operated consequent upon the happening of a certain event described in paragraph 12 of the First Schedule to the Ordinance;

(2) the Registrar had no power on his own motion to remove the members from the register of the union where it has not been shown conclusively that these members had taken industrial action in contravention of the Ordinance and rules of the union;

(3) the Registrar had in this case arrived at his finding without due and proper enquiry and therefore the decision was invalid as infringing the principles of natural justice.

Cases referred to:-

(1) *Board of Education* v. *Rice* [1911] A.C. 179.
(2) *M. Appukutty* v. *Sales Tax Officer* A.I.R. 1966 Kerala 55.
(3) *Healey* v. *Minister of Health* [1955] 1 Q.B. 221 @ 227.

ORIGINATING MOTION.

D.P. Xavier (*K.P. Gengadharan* with him) for the applicants.

Miss Susila Param (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: In this notice of motion the Metal Industry Employees Union is asking that the order made by the Registrar of Trade Unions, Malaysia, contained in his letter dated August 4, 1978, (Exhibit MIEU 6) be quashed. The order sought to be quashed was that the names of 61 members of the union be removed forthwith from the register of the union because of their purported involvement with certain illegal industrial actions. The order of the Registrar was purported to be made under section 26(3) of the Trade Unions Ordinance, 1959 (hereinafter referred to as "the Ordinance").

The grounds given in the statement can simply be summarised as follows: —

(1) The Registrar had no power under section 26(3) of the Ordinance to order the removal of names of the members of the union from the register of the union; and

(2) Even if the Registrar had the power, the order was invalid because no proper enquiry was held by the Registrar and that the Registrar had violated the principles of natural justice and that the order was arbitrary and capricious.

For convenience section 26(3) of the Ordinance is reproduced below:

"Any group of employees being members of a trade union, who take any form of industrial action in contravention of this Ordinance or the rules of such union, shall cease to be members of the union and thereafter such members shall not be eligible from becoming members of a trade union unless approved by the Registrar."

This subsection was added to the Ordinance by Act A90 but was repealed by Act A483 with effect from May 30, 1980. Relevant for consideration along with section 26(3) is section 38(1) of the Ordinance and paragraph 12 of the First Schedule to the Ordinance. Section 38(1) provides that the rules of every registered trade union shall make provision for all matters as specified in the First Schedule. Paragraph 12 of the First Schedule to the Ordinance prescribes that one of the matters for which provision must be made in the rules of every registered trade union is the matters relating to cessation of membership if members take industrial action in contravention of any provision of the Ordinance or the rules of the union. Paragraph 12 was also repealed and substituted by Act A483 with effect from May 30, 1980.

It is not disputed that the rules of the applicant union during the material period contained the provisions in paragraph 12 to the First Schedule to the Ordinance.

Looking at these statutory provisions it will seem clear that the two basic issues are:

(1) whether the Registrar of Trade Unions, Malaysia has power under section 26(3) of the Ordinance to order removal of the names of those workers from the register of the union; and

(2) if the answer to the first is in the affirmative, whether the order he made was nevertheless invalid on the grounds alleged in the statement.

Before the Ordinance was amended by Act A483 the powers of the Registrar were given in section 3 of the Ordinance which provided that the Registrar